

EXHIBIT 2



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ENVIRONMENTAL PROTECTION AGENCY
[OPP-2004-0037; FRL-7345-8]

Availability of Court Orders in Washington Toxics Coalition v.
EPA Litigation

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: This notice announces to the public the availability of a notice issued by a federal district court affecting certain aspects of the sale, distribution and use of pesticides and instructs certain entities about their responsibility to inform others of these Orders. In response to a citizen suit filed under the Endangered Species Act against EPA by the Washington Toxics Coalition and other public interest groups, the United States District Court for the Western District of Washington issued an Order granting interim injunctive relief on January 22, 2004. The Order (with some exceptions) enjoins vacates and sets aside EPA's authorization of certain pesticides' within 20 yards for ground applications and 100 yards for aerial applications, adjacent to salmon supporting waters in California, Oregon and Washington, effectively establishing buffer zones around those waters. The Court also ordered EPA to notify a variety of entities in the affected states of this injunction, and of previous Orders issued by the Court in this case, and to instruct registrars and the affected states to inform certain persons who sell, distribute and use pesticides of the Order. Unit II. of this Notice provides detail the list of persons and entities to whom this notification instruction apply. Further, the Court ordered EPA to develop and facilitate the availability of a point of sale notification in urban areas in the three states, for certain products containing any of active ingredients. The Court's January 22 Order, which carries an effective date of February 5, 2004, and other related materials, including the Court's previous Orders, are available on EPA's web site (See Unit I.B.3. of the SUPPLEMENTARY INFORMATION for the web site).

address).

FOR FURTHER INFORMATION CONTACT: Arty Williams, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 2040001; telephone number: 703-305-5239; fax number: 703-308-3259; e-address: williams.arty@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to certain pesticide registrants, state certified applicators, and licensed pesticide dealers. This Notice also be of particular interest to persons in California, Oregon and Washington who may wish to use a pesticide near salmon supporting waters. The Court has defined salmon supporting waters in its January 22, 2004 Order. This action may also be of particular interest to distributors, retail sales businesses, and pesticide applicators in California, Oregon and Washington and registrants of pesticides containing the active ingredients subject to the Court's injunction. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under FURTHER INFORMATION CONTACT.

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B. How Can I Get Copies of this Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under docket identification (ID) number OPP-2004-0037. The official public docket consists of the documents specifically referenced in this notice, and other information related to this notice. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m. Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. Electronic access. You may access this Federal Register document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You can use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I. Once in the system, select "search," then key in the appropriate docket ID number.

3. EPA Web site. You may also find these documents on EPA's

endangered species Web site at <http://www.epa.gov/espp>.

II. Background

A. What Action is the Agency Taking?

EPA is notifying the public of certain Court Orders affecting pesticide use in California, Oregon and Washington. On January 30, 2001, the Washington Toxics Coalition and a number of other public interest groups filed suit against the U.S. Environmental Protection Agency (WTC v. EPA) alleging EPA had failed to assess the potential certain pesticides to harm federally listed endangered and threatened species, and to consult with the National Marine Fisheries Service (NMFS) on whether those pesticides posed jeopardy to 26 federally listed endangered and threatened Pacific salmon and steelhead. Under the Endangered Species Act, EPA must ensure that its registration pesticides is not likely to jeopardize the continued existence of species listed as endangered and threatened, or to adversely modify habitat critical to those species' survival. In addition to the obligation to ensure that its actions do not jeopardize listed species the Agency must consult, as appropriate, with the U.S. Fish and Wildlife Service or NMFS if a pesticide's use may affect listed species or designated critical habitat for a listed species.

The Chief Judge of the United States District Court for the Western District of Washington issued an opinion on July 2, 2002, ordering EPA to review pesticides containing any of 55 active ingredients, for potential effects on these listed species and to consult with NMFS if appropriate. EPA has reviewed over half of those pesticides and is consulting with NMFS on certain determinations. Chief Judge Coughlin issued the January 22, 2004 Order in response to the Plaintiffs' motion for injunctive relief to establish buffer zones as an interim measure to "substantially reduce the likelihood of jeopardy" to 26 species of Pacific salmon and steelhead, until EPA and, where appropriate, NMFS have completed an evaluation of the potential impacts of these 55 pesticides on endangered Pacific salmon and steelhead.

As of February 10, 2004, no stay request has been filed and none has been issued in either the District Court or the Court of Appeals. Accordingly, the Order became effective on February 5, 2004. Until further judicial proceedings occur, EPA cannot determine the extent to which the Order will remain effective. If, however, the Order remains in effect EPA intends to provide information on the above Web site which will assist pesticide users and others in understanding the requirements created by the January 22 Order, where and to whom the requirements apply, and when any of those requirements is lifted or modified.

Because of EPA's reviews and effects determinations on many of 55 pesticides, the Court's Order effectively applies only to the following 38 pesticides:

1. 1,3-Dichloropropene
2. 2,4-D
3. Acephate
4. Azinphos-methyl
5. Bensulide
6. Bromoxynil
7. Captan
8. Carbaryl
9. Carbofuran
10. Chlorothalonil
11. Chlorpyrifos
12. Coumaphos

13. Diazinon
14. Diiflubenzuron
15. Dimethoate
16. Disulfoton
17. Diuron
18. Ethoprop
19. Fenamiphos
20. Fenbutatin-oxide
21. Lindane (gamma-BHC and HCH)
22. Linuron
23. Malathion
24. Methamidophos
25. Methidathion
26. Methomyl
27. Methyl parathion
28. Metolachlor
29. Metribuzin
30. Naled
31. Oxyfluorfen
32. Pendimethalin
33. Phorate
34. Prometryn
35. Propargite
36. Tebuthiuron
37. Triclopyr BEE
38. Trifluralin

In addition, as explained in detail in the Court's Order, the provisions concerning buffer zones do not apply to all uses of the above pesticides in all parts of California, Oregon and Washington. Rather, the Order applies only in certain circumstances. A determination of the applicability of the Order requires consideration of: (1) Which active ingredient is in the pesticide product; (2) the pesticide product is intended to be used; and (3) where the product is intended to be used. Further, the Order provides that changes in certain circumstances would affect the applicability of the Order, for example, as EPA makes additional effects determinations, or as NMFS moves ahead in its review of EPA's determinations. Thus, a pesticide user should review, as close as possible to the time of intended use, the Order posted on EPA's Web site (<http://www.epa.gov/espp>), as well as any additional information updating the Order, to ascertain whether the provisions would affect a specific product, use, and location.

In addition to provisions that, in effect, establish buffer zones around salmon supporting waters for certain pesticides and to provisions that require point of sale notification, the January 22, 2004 Order contains provisions imposing requirements on EPA to inform the public and certain specific entities of this and other Orders. Accordingly, by issuance of this Notice, EPA hereby:

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1. Informs the public, registrants, states, certified applicators and licensed pesticide dealers of the Court's Orders in this case on July 2, 2002; July 16, 2003; August 8, 2003; and January 22, 2004. EPA is posting the full text of these Orders on its web site at <http://www.epa.gov/espp>.

2. Instructs registrants of the pesticides to which the January 22, 2004 Order applies, to make pesticide distributors, wholesalers, retailers, brokers, dealers and others in privity with them, aware of the January 22, 2004 Order issued by the Court.

3. Instructs the affected states to inform registrants, certified

applicators, and licensed pesticide dealers of the January 22, 2004 Order.

B. What is the Agency's Authority for Taking this Action?

This action is taken pursuant to the January 22, 2004 Order of Court in Washington Toxics Coalition, et al v. EPA, C01-0132 (W.D.

List of Subjects

Environmental protection, Endangered species.

Dated: February 10, 2004.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 04-3364 Filed 2-13-04; 8:45 am]

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Last updated on Tuesday, February 17th, 2004

URL: <http://www.epa.gov/fedrgstr/EPA-PEST/2004/February/Day-17/p3364.htm>